

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of:

Telephone Company-Cable
Television Cross-Ownership
Rules, Sections 63.54-63.58

CC Docket No. 87-266

and

Amendments of Parts 32, 36, 61,
64 and 69 of the Commission's
Rules to Establish and Implement
Regulatory Procedures for Video
Dialtone Service

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RM-8221

AMERITECH'S REPLY TO COMMENTS
ON ITS PETITION
FOR RECONSIDERATION AND CLARIFICATION

The Ameritech Operating Companies¹ ("Ameritech" or the "Company") respectfully submit the following reply to the initial comments on Ameritech's Petition for Reconsideration and Clarification ("Ameritech PFR") of the Commission's Memorandum Opinion and Order released in the above-captioned dockets on November 7, 1994.²

I.

INTRODUCTION

The Ameritech PFR asked the Commission to reconsider its channel capacity restrictions and its Part 69 waiver requirements. Ameritech said any programmer on a

¹ The Ameritech Operating Companies are: Illinois Bell Telephone Company, Indiana Bell Telephone, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company and Wisconsin Bell, Inc.

² Memorandum Opinion and Order on Reconsideration ("VDT Recon Order") and Third Further Notice of Proposed Rulemaking ("Third Notice"), CC Docket Nos. 87-266, RM-8221, rel. November 7, 1994.

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video dialtone ("VDT") platform should be allowed to utilize, on an on-going basis, the number of analog channels the market requires to effectively compete with the incumbent cable operator and, therefore, the Commission should not set a fixed limit on the number of channels that can be assigned to any individual programmer.³ Ameritech also explained why the Commission's Part 69 waiver requirements are inappropriate and unnecessary.⁴

Cable operators which oppose Ameritech's Petition for Reconsideration raise arguments designed to limit Ameritech's ability to compete in the video marketplace or delay the time when competition will begin to emerge.⁵ Their arguments should be rejected.

II.

THE COMMISSION SHOULD AVOID SETTING A FIXED LIMIT ON THE NUMBER OF CHANNELS ASSIGNED TO ANY INDIVIDUAL VIDEO PROGRAMMER.

In the channel capacity portion of its Petition for Reconsideration, Ameritech asked the Commission to do nothing more than make clear "that by prohibiting an allocation of 'all or substantially all' of the capacity on a video dialtone platform to an 'anchor programmer,' it is not prohibiting an LEC from allocating sufficient analog capacity to any video programmer so that the programmer can, on an ongoing basis, provide the number of channels that the market requires to effectively compete with the incumbent cable operator."⁶ Not surprisingly, the cable operators oppose this request. They say it would undermine the common carrier aspects of VDT and decrease the prospects of "intramodal" competition among various video programmers.⁷ In fact, the cable operators oppose

³ Ameritech PFR at 2-5.

⁴ Id. at 5-7.

⁵ Comments of the National Cable Television Association, Inc. ("NCTA"); Viacom International Inc. ("Viacom").

⁶ Ameritech PFR at 4-5.

⁷ NCTA at 3-5; VIACOM at 3-9.

Ameritech's request because, by definition, it would not be in their commercial self-interest to allow another programmer to "provide the number of channels that the market requires to effectively compete with the incumbent cable operator."⁸

The Commission already has promulgated rules which are designed to ensure that video programmers will have non-discriminatory access to common carrier VDT platforms. Indeed, NCTA says this "constitutes the distinctive feature of video dialtone which separates it from cable service."⁹ There simply is no good reason for the Commission now to prescribe an additional rule that could be interpreted as setting a fixed limit on the number of channels that could be assigned to any individual video programmer regardless of other circumstances.

III.

THE COMMISSION'S PART 69 WAIVER REQUIREMENT REMAINS INAPPROPRIATE AND UNNECESSARY NOTWITHSTANDING NCTA'S ARGUMENT TO THE CONTRARY.

Ameritech explained in its PFR why the Commission's Part 69 waiver requirement is inappropriate and unnecessary. The Company explained that the requirements are not appropriate because the Commission's access rules, which were designed to ensure a uniform nationwide tariff structure, should not apply to VDT service which telephone companies will provide using different architectures. In any event, it would not be appropriate to apply switched access waiver requirements to VDT services which are not switched. The Part 69 waiver requirements were unnecessary, Ameritech noted, because

⁸ Ameritech PFR at 4-5. The Commission must ask itself whether a vertically integrated cable company operating a closed-end cable system is really interested in "fostering greater multichannel video competition" (Viacom at 3) and "intramodal" competition among various programmers (*id.* at 4, fn. 6), or simply is using those arguments as a means to prevent a viable competitor from emerging in the video marketplace.

⁹ NCTA at 3.

the VDT tariff review process will provide sufficient opportunity for interested parties to challenge rate structures and cost allocations.¹⁰

NCTA's contrary arguments have no merit. NCTA says that the Part 69 waiver requirements are necessary to ensure "an equitable and uniform rate structure" for VDT services.¹¹ Yet, on this point, the Commission already has determined that:

[b]ecause video dialtone is a nascent service, though, and in light of the wide variety of possible video dialtone architectures LECs may employ, we find that there is a significant risk that any uniform rate structure we would prescribe now would fail to produce rate elements that logically match each carrier's video dialtone offerings.¹²

NCTA has not objected to this rationale. Therefore, NCTA cannot point to the need for uniformity to support the Part 69 waiver requirements.

Nor can NCTA reasonably argue that VDT should be treated generally as switched service simply because some VDT services may involve switching.¹³ Neither Analog Multicast nor Digital Multicast utilize any switching and, therefore, are comparable to Special Access services in the access charge environment. Dedicated services such as these have been added to the Special Access tariffs for years without the need for a Part 69 waiver; the same process should be sufficient for VDT service, as well.

¹⁰ Ameritech PFR at 5-7.

¹¹ NCTA at 6.

¹² VDT Recon Order at par. 196.

¹³ In other contexts, NCTA has characterized the Commission's decision to classify VDT as a switched access service as "puzzling" and "somewhat curious." In the Matter of The Bell Atlantic Telephone Companies, Waiver of Section 69.110, 69.112, 69.305(b), and 69.307(c) of the Commission's Rules to Offer Video Dialtone Service, DA-94-1345, Opposition of NCTA, filed December 14, 1994 at 3; In the Matter of The Bell Atlantic Telephone Companies, Waiver of Section 69.106 of the Commission's Rules to Offer Video Dialtone Service in a Limited Market Trial, DA-95-145, Opposition of NCTA, filed February 13, 1995 at 3.

Ameritech explained in its PFR why the Part 69 waiver requirement is unnecessary given the existing cost accounting and reporting process embodied in Part 32.¹⁴ NCTA's only rejoinder is its argument that the Part 32 process is designed to protect "local ratepayers".¹⁵ NCTA does not explain why the Part 32 process together with the tariff review process is not sufficient to protect NCTA. NCTA simply concludes that combining the Part 69 function with the tariff review process "heightens the risk of cross-subsidy due to the exclusion of appropriate cost elements and reduces the ability of interested parties to challenge LEC rate structures that are insufficiently unbundled"¹⁶ even though such issues, if any, could be raised and resolved in the tariff review process.

The fact of the matter is that the Part 69 waiver requirement is simply an unnecessary step which does little more than provide another opportunity for competitors to further delay the public benefits of VDT service. Ameritech cautioned the Commission on this potentiality in its Petition for Reconsideration.¹⁷ Since that time, AT&T has asked the Commission to reject or suspend a VDT tariff filing -- and thereby delay a VDT service offering -- in part because a Part 69 waiver had not been secured in advance of the tariff filing.¹⁸ If there was any doubt about how certain parties will use the Part 69 waiver process to delay the introduction of VDT service, that doubt now should be resolved. The Commission should eliminate this Part 69 waiver requirement because rate structure and cost allocations can be reviewed in the tariff review process.

¹⁴ Ameritech PFR at 6-7.

¹⁵ NCTA at fn. 20.

¹⁶ Id. at 7-8.

¹⁷ Ameritech PFR at 7.

¹⁸ In the Matter of Bell Atlantic Telephone Companies Revision to Tariff F.C.C. No. 10 (Video Dial Tone Service), Transmittal No. 741, AT&T's Petition to Reject or, in the alternative, to Suspend and Investigate, filed February 22, 1995.

IV.

CONCLUSION

For all of these reasons, the Commission should reject the arguments of NCTA and Viacom, and should reconsider and clarify the decisions reached in the VDT Recon Order regarding the capacity a video programmer may utilize in a video dialtone platform and the Part 69 waiver requirements as requested in Ameritech's PFR.

Respectfully submitted,



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February 24, 1995

CERTIFICATE OF SERVICE

I, Linda J. Jeske, do hereby certify that copies of the foregoing Ameritech's Reply to Comments on its Petition for Reconsideration and Clarification were sent via first class mail, postage prepaid, this 24th day of February, 1995 to the parties of record in this matter.

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